114-323.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 941.

J. ADAIR PLEASANTS, APPELLANT,

vs.

SAMUEL C. GREENHOW, TREASURER OF THE CITY OF RICHMOND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED SEPTEMBER 19, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 Pleas before the circuit court of the United States for the eastern district of Virginia, at Richmond, in said district, on Tuesday, September 2d, A. D. 1884.

Present: Hon. Hugh L. Bond, judge, presiding.

Cause No. 352. In Equity.

J. ADAIR PLEASANTS, Complainant,
against
SAMUEL C. GREENHOW, Treasurer of the city of Richmond, Virginia, and, as such, collector of State taxes in and for said city, Defendant.

Be it remembered that heretofore, to wit, on the 25th day of February A. D. 1884, came the complainant, J. Adair Pleasants, by his attorney, and filed in the clerk's office of the said circuit court of the United States his bill of complaint against the said defendant, which bill of complaint is in the words following, to wit:

Bill of Complaint.

To the honorable judges of the circuit court of the United States for the eastern district of Virginia:

2 Complaining, sheweth unto your honors, your orator, J. Adair Pleasants, that he is a citizen of the State of Virginia, residing in the city of Richmond in said State; that he owns property in said State and in said city, and that he was assessed on said property situated in said city by the officers of the State of Virginia, whose duty it was to make such assessment, with the sum of thirty-six dollars and twenty-five cents as taxes due by him to the State of Virginia for the year 1883, which said taxes were for the said year, and that your orator now owes said amount of taxes for said year as is hereinafter explained; that by the terms of the statute laws of the said State of Virginia it is enacted and provided that the collectors of taxes shall collect all taxes due the State that have not been paid prior to the first day of December in every year by levy, distress, and other appropriate proceedings.

That Samuel C. Greenhow is the treasurer of the said city of Richmond, and, as such, collector of State taxes in and for said city, and that it is made his duty by the laws of Virginia to collect the taxes due to the State of Virginia by persons residing in said

3 city; that on the 23d day of February, 1884, your orator tendered to the said Samuel C. Greenhow, treasurer and collector as aforesaid, in payment of his said taxes, one coupon cut from a bond issued by the State of Virginia under the provisions of an act of the General Assembly of the State of Virginia, approved March 30th, 1871, entitled "An act to provide for the funding and payment of the public debt" which coupon was for thirty dollars and was overdue and past maturity, and bore upon its face the contract of the State of Virginia that it should be received in payment of all taxes due to her as and for thirty dollars, and, at the same time, your orator also tendered to

said Greenhow six dollars and twenty-five cents of lawful money of the United States as and for a part of said tender; the two said sums constituting together exactly the amount so due as aforesaid by your orator. But the said Samuel C. Greenhow refused to receive the said coupon and money in payment of your orator's said taxes, for the reason that the act of the General Assembly of Virginia, approved January 26th, 1882, forbade him to so receive them. That after your orator had made said tender the said Samuel C. Greenhow an-
4 nounced to your orator that unless your orator proceeded to pay his said taxes in gold or silver coin, United States treasury notes, or national bank notes, he should levy upon and seize the personal property of your orator, and sell the same to satisfy said claim for taxes; your orator believes that unless the said treasurer and collector is enjoined and restrained from so doing he will execute his threat and will levy upon the property of your orator in said city and sell the same as he is commanded to do by the statutes enacted by the General Assembly of the State of Virginia, and thereby cause great, irreparable, and irremediable injury to your orator.

Your orator is ready and willing to deliver to said treasurer, in payment of his said taxes, the said coupon and money which he tendered as aforesaid, whenever the said treasurer is ready and willing to receive the same in payment of the same, and he brings
5 the same here into court for the said treasurer, to abide such order as this honorable court may see fit to make respecting the same.

Your orator is advised and believes that when the State of Virginia issued the coupon aforesaid she entered into a valid and binding contract with whoever might be the holder thereof to receive the same in payment of taxes due to her, and that your orator, by virtue thereof, acquired a right to tender the same in payment of his taxes, and to be exempt thereafter from any and all obligation to pay his taxes in any other medium of payment, and that the act of the General Assembly of Virginia, approved January 26th, 1882, forbidding the collectors of taxes to receive coupons in payment of the same, and the act of the General Assembly of Virginia commanding collectors of taxes to levy for the same after the tender of coupons, are repugnant to Section 10 of Article 1 of the Constitution of the United States, and are therefore void, and that the said Greenhow, treasurer and collector as aforesaid, in proceeding to levy upon your orator's property after such tender, in obedience
6 to the provisions of said acts, is about to deprive your orator of a right secured to him by the Constitution of the United States, and will be trespassing upon your orator under the authority of a State law, which impairs the obligation of a contract.

For as much, then, as your orator is remediless in the premises, save in a court of equity, where matters of this kind are alone cognizable, he prays that said Samuel C. Greenhow, treasurer and collector as aforesaid, may be made a party defendant to this bill, and required to answer each and every allegation thereof fully on oath, and that the said Samuel C. Greenhow, treasurer and collector as aforesaid, may be enjoined and restrained from levying on the prop-

erty of your orator or selling the same to pay his said taxes, and for all such further and general relief as the nature of his case may require or to equity may seem meet; that the writ of subpœna may issue, and he will ever pray, &c.

J. ADAIR PLEASANTS.

WM. L. ROYALL,
Solicitor for Complainant.

7 STATE OF VIRGINIA, }
City of Richmond, } *to wit:*

This day personally appeared before me, Julius Straus, a notary public in and for the city aforesaid, J. Adair Pleasants, and made oath that the allegations contained in the foregoing bill are true.

Given under my hand, this 25th day of Feb'y, 1884.

JULIUS STRAUS, *N. P.*

UNITED STATES OF AMERICA, }
Eastern District of Virginia, } *ss:*

This day personally appeared before me, M. F. Pleasants, a U. S. commissioner in and for the eastern district of Virginia, McLain Pleasants, and made oath that on the 14th day of April, 1884, he served upon F. S. Blair, the attorney general of Virginia, a true copy of the within bill.

Given under my hand, this 14th day of April, A. D. 1884.

M. F. PLEASANTS,
U. S. Com'r Ea. Dist. Va.

Thereupon, upon the same day, to wit, on the 25th day of February, A. D. 1884, a subpœna in chancery was issued from the
8 clerk's office of the said circuit court of the United States, which, with the return thereon, is as follows:

Subpœna in Chancery.

UNITED STATES OF AMERICA, }
Eastern District of Virginia, } *ss:*

The President of the United States of America to Samuel C. Greenhow, treasurer of the city of Richmond, Virginia, and, as such, collector of State taxes in and for said city, Greeting:

We command you that you appear before our judges of our circuit court of the United States of America for the eastern district of Virginia, at the court room in the custom house in the city of Richmond, in said district, on the first Monday in the month of April next, to answer the bill of complaint of J. Adair Pleasants, a citizen of the State of Virginia, residing in said city of Richmond, this day filed in the clerk's office of said court, in said city of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the eastern dist. of Virginia to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid, this 25th day of February, in the year of our Lord one thousand eight hundred and eighty-four, and of our independence the 108th.

9

[SEAL.] M. F. PLEASANTS, *Clerk.*

Memorandum.

The above-named defendant is hereby notified that unless he enter his appearance in the clerk's office of said court, at Richmond aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

M. F. PLEASANTS, *Clerk.*

Return of Subpœna.

Executed this 25th day of February, A. D. 1884, by delivering to Samuel C. Greenhow, treasurer of the city of Richmond, Virginia, the within-named defendant in person, a true copy of this writ.

R. P. HUGHES, *Marshal.*

Decree Nisi.

And at another day, to wit, at rules held in the clerk's office of the said circuit court of the United States, on the first Monday in April, 1884.

This day came the complainant by his counsel, and it appearing that the subpœna in this cause has been duly executed on the defendant, and said defendant having failed to enter his appearance, it is ordered that the complainant's bill be taken for confessed against the said defendant at the next rules, unless said defendant shall file his plea, answer, or demurrer at that time.

10

And at another day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond in said district on the 10th day of April, A. D. 1884, the following order was entered:

J. ADAIR PLEASANTS
v.
SAMUEL C. GREENHOW, Treasurer, &c. } 352. In Equity.

On motion of the complainant it is ordered that this cause be set for hearing, on an application for an injunction, on the 24th day of April, 1884, or as soon thereafter as it can be heard, provided that one week's notice thereof is given to the defendant.

HUGH L. BOND,
C't Judge.

UNITED STATES OF AMERICA, *Eastern District of Virginia*, } *ss:*

11 This day personally appeared before me, M. F. Pleasants, a U. S. commissioner in and for the eastern district of Virginia, McLain Pleasants, and made oath that on the 14th day of April, 1884, he served on Samuel C. Greenhow, in person, a duly certified copy of the above order.

Given under my hand, this 14th day of April, 1884.

M. F. PLEASANTS,
U. S. Comm'r Ea. Dist. of Va.

And at another day, to wit, at rules held in the clerk's office of the said circuit court on the first Monday in May, 1884.

This day came the defendant by counsel and filed his demurrer and answer to the complainant's bill as follows:

Demurrer and Answer of Defendant.

In the Circuit Court of the United States for the Eastern District of Virginia.

To the honorable judges thereof:

The demurrer and answer of Samuel C. Greenhow, treasurer of Richmond city, and, as such, collector of State taxes in and for said city, to a bill for injunction exhibited in your honorable court against him by J. Adair Pleasants, a citizen of the State of Virginia, by way of demurrer says:

First. That the said bill is insufficient in law for the relief claimed therein.

12 Second. Because this honorable court has no possible jurisdiction in this case, its action would be a usurpation and its proceedings absolutely void for that reason.

Third. Because it is a fundamental principle in all sovereignties that a State cannot be sued at all unless she consents to be sued, and she has not consented to be sued in this honorable court.

Fourth. Because by the acts of the General Assembly of Virginia, approved January 14, 1882, and January 26, 1882, the State has designated the mode and the forum in which she will be sued, in the matter of coupons, and, therefore, the suit and proceeding must be in the mode and in the forum in which she has elected and consented to be sued.

Fifth. This suit directly affects the collection of the public revenue of the State and the receipt of her coupons therefor, and for that additional reason this honorable court should not entertain this suit or suits of this character; but if respondent should be compelled to answer the said bill, without in anywise waiving his demurrer, answering, he says that he does not deny any of the allegations of fact contained therein, as he believes they are correctly recited, but he does deny the right of the said complainant to relief prayed for therein.

13 The bill asks that respondent be restrained from levying upon the personal property of the complainant and selling the same to satisfy taxes due from him to the State in the year 1883, upon the ground that complainant, on the 23d of Feb'y, 1884, tendered a coupon of thirty dollars, detached from a bond of the State issued under the act of March 30, 1871, and the balance in money. Respondent insists that this pretense is unfounded.

1st. Because the taxes of complainant were due prior to the 1st of December, 1883, and the said tender was not made until the 23d of February, 1884.

2d. By the act of 26th of Jan'y, 1882, no suit can be sustained, because the provisions of that act have in nowise been complied with by payment of the taxes in money under protest, nor by suit in the court having jurisdiction of the party as a State officer. The proceedings should have been made to conform to the remedy prescribed by that act.

3d. The coupons tendered were unverified, and, therefore, this proceeding does not conform to any of the requirements of the act of the 14th of January, 1882, for the verification of coupons by a jury, which, in the case of Antoni *vs.* Greenhow, was held to be a constitutional requirement, nor does it conform to the act of

14 26th January, 1882.

Respondent affirms that both of these acts are constitutional, and the proceedings in this case must conform to them, and he denies any trespass by him upon complainant's property; he denies that complainant would be deprived by said levy and sale of any right secured to him by the Constitution of the United States; he denies that said tender of said unverified coupon, and its refusal, was a payment of said taxes; he denies any irreparable injury to complainant from said levy, and he explicitly repeats that the amount in controversy in this case, being thirty-six dollars and twenty-five cents, is below the jurisdiction of this court. And now, having fully answered, respondent prays to be hence dismissed with his reasonable costs.

SAMUEL C. GREENHOW,
Treasurer.

Per S. G. TINSLEY,
Ass't Treasurer.

Per F. S. BLAIR,
Att'y General.

STATE OF VIRGINIA, }
City of Richmond, } *to wit:*

I, Robert D. Ward, a notary public for the said city in the State aforesaid, do certify that S. G. Tinsley made oath before me that the statements in the foregoing answer are true to the best of his knowledge, information, and belief. Given under my hand, this 14th day of April, 1884.

ROBERT D. WARD, *N. P.*

In which demurrer, the plaintiff, joined, and replied generally to the defendant's answer.

15 And now at this day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond, this 2d day of September, 1884:

J. ADAIR PLEASANTS
v.
SAMUEL C. GREENHOW, Treasurer, &c. } 352. In Equity.

This cause came on this day to be heard upon the bill of the complainant and the demurrer and answer thereto of the defendant, and was argued by counsel and submitted on briefs. On consideration whereof it is adjudged, ordered, and decreed that the prayer of the bill for an injunction be denied, and that the bill of the complainant be dismissed for want of jurisdiction of this court to entertain the same.

HUGH L. BOND,
C't Judge.

And on the same day, to wit, at a circuit court as aforesaid, held at Richmond aforesaid, on the 2d day of September, 1884, the following order was entered:

Upon the application of the complainant therefor, in open court at the same time when the final decree herein mentioned is entered, an appeal is allowed him to the Supreme Court of the United States from the decree entered herein by the Hon. H. L. Bond, circuit judge, denying the injunction prayed for and dismissing the com-
16 plainant's bill, and the defendant is hereby restrained from levying on or seizing the plaintiff's property pending this appeal.

RO. W. HUGHES, *Judge.*

Richmond, 2d Sept., 1884.

Bond on Appeal, Filed by Appellant.

Circuit Court of the United States of America for the Eastern District of Virginia.

J. ADAIR PLEASANTS *vs.* SAMUEL C. GREENHOW, Treasurer, &c.

Know all men by these presents that we, William L. Royall and Richard W. Maury, are held and firmly bound unto Samuel C. Greenhow, treasurer of the city of Richmond, Virginia, in the sum of five hundred dollars, to be paid to the said Samuel C. Greenhow, treasurer, &c., his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this first day of September, A. D. 1884.

Whereas the above-named J. Adair Pleasants hath taken an appeal in the above-entitled suit to the Supreme Court of the United States to reverse the final decree rendered in the above-entitled

17 suit by the circuit court of the United States for the eastern district of Virginia:

Now, therefore, the condition of this obligation is such, that if the above-named J. Aldair Pleasants shall prosecute his said appeal to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WM. L. ROYALL. [SEAL.]
RICH'D W. MAURY. [SEAL.]

The foregoing bond is approved.
RO. W. HUGHES, *Judge.*

The following opinion was filed in the cause by the Hon. Hugh L. Bond, circuit judge:

18 *Bill in Equity for Injunction and Relief.*

In the U. S. Circuit Court, Eastern District of Virginia.

PLEASANTS *vs.* GREENHOW, Treasurer.

The complainant is a citizen of Virginia, as is the defendant, who is likewise treasurer of the city of Richmond and collector of Virginia State taxes. The complainant was in February, 1884, indebted to the State for taxes in the sum of thirty-six dollars and twenty-five cents ($36.25), for which amount he tendered a coupon cut from a bond of the State, issued under the act of March 30, 1871, for $30, and $6.25 in lawful money of the United States. The bill alleges that the defendant refused to receive said coupon and money, for the reason that the act of Virginia, of January 26, 1882, forbade him to receive them; that thereupon the defendant informed the complainant that he should proceed to levy and collect from the complainant's personal property the amount of said taxes, and that defendant will do so unless he is restrained therefrom by this court.

19 The complainant avers his readiness to deliver the said coupon and money to the said collector, and brings the same into court to abide its order.

The complainant further alleges that the State of Virginia, when it issued the said coupon, entered into a valid and binding contract to receive the same in payment of all dues to the State, and that it is the complainant's right, upon the tender of such coupons, to be free from all further attempts to collect the said tax, and that the acts of Virginia which authorize the collector to refuse the tender of coupons, and to proceed to levy after such tender, are void, as repugnant to Section 10, Article 1, of the Constitution of the United States, and as a deprivation of a right secured to the complainant by the Constitution of the United States.

The complainant, then, prays that the defendant may be required to answer the bill, and may be enjoined and restrained from levying upon the complainant's property; and for such further and general relief as to equity may seem agreeable.

To this bill the defendant files a demurrer, and answer by way of demurrer, in which he sets up:

20 1st. That the bill is insufficient in law for the relief claimed.

2nd. That this court has no jurisdiction in the case.

3rd. That a State cannot be sued without her consent, and that the State of Virginia has not consented to be sued in this court in this case.

4th. That the acts of the State of Virginia of January 14th, 1882, and January 26th, 1882, have provided a mode and form in which all suits are to be brought concerning coupons, and that the present suit is not brought in accordance with such acts.

5th. That this suit affects the collection of the public revenues of the State of Virginia, and should not be entertained by this court; but that, if the defendant should be compelled to answer the bill, he says that, without waiving his demurrer, he answers:

First. That the allegations of fact contained in the bill are true, but he denies the right of the complainant to the relief prayed for. For further answer he insists that the complainant is not entitled to the relief sought, because the taxes of complainant were due

21 prior to the 1st — December, 1883, and, the tender was not made until the 23d of February, 1884.

Second. That this suit cannot be maintained, because the complainant has not complied with the provisions of the act of January 26th, 1882, in respect to the payment of taxes in money under protest, &c.

Third. That the coupons tendered are unverified, and hence plaintiff has not conformed to the provisions of the act of 14th January, 1882.

Finally, the defendant affirms that both the acts referred to of the State of Virginia are constitutional, and that all proceedings by the complainant must conform to these acts, and denies that the complainant would be deprived, by the levy and sale of his property, of any rights secured to him by the Constitution of the United States.

It is not worth while either to debate or decide the many questions raised by these proceedings, for the decision of one of them, the 2nd ground of the demurrer, if decided adversely to complainant, takes away the power of the court to determine the

22 others. If the court has no jurisdiction in the matter it can properly say nothing in regard to the other points presented

The first question to be determined is, then, has the court jurisdiction in the case? It will be seen from the statement of it that the amount involved in the controversy does not exceed $500, exclusive of costs, which is fixed in the act of March 3rd, 1875, as the minimum sum which gives the circuit court of the United States jurisdiction.

The complainants contend that in all cases arising under the Constitution or laws of the United States, the circuit court of the United States, under section 1979 of Revised Statutes, have jurisdiction without regard to the amount involved. We do not think so. The words of the act of March 3d, 1875, that the courts shall have juris-

diction of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution or laws of the United States * * * * * * or in which there shall be a controversy between citizens of different States,"
23 seem to us to make it necessary that the cause, whether arising at common law, between citizens of different States, or under the Constitution and laws of the United States, should involve an amount exceeding $500, exclusive of costs.

By section 1979 of Revised Statutes there may be cases arising under the Constitution of the United States or the laws thereof, not for the recovery of money or sounding in damages, but to maintain or recover the rights, privileges, and immunities of a citizen of the United States as such. In a case of this kind the United States courts have abundant jurisdiction and power to maintain the rights of the citizen. But it is so ordered by Congress that if the right to be maintained involves a money consideration, before the courts of the United States can entertain it, that consideration must exceed in amount $500 exclusive of costs.

Section 1979 was prior to section 629, which is re-enacted March 3rd, 1875; but even section 1979 makes the limit of damage recoverable — in one case it refers to $500, and make all actions under
24 it sound in damages, which the plaintiff can allege to exceed $500 exclusive of costs, and that allegation would give the court jurisdiction.

The present case is a mere question of debt. The tax collector alleges complainant owes the State of Virginia $36.25. The complainant asserts that he has tendered a coupon in payment, which by law of Virginia is receivable for public taxes, and that by Section 10 of Article 1 of the Constitution of the United States, the State cannot refuse to comply with its contract to so receive it as payment.

This is admitted, is clearly law, and has so been decided by this court. But we think that Congress, by the act of March 3rd, 1875, in cases arising under the Constitution, as well as in other cases mentioned in said act arising between citizens of different States, requires the amount involved to be a sum exceeding $500, exclusive of costs, before the jurisdiction of the United States circuit courts extends over it. This does not seem an unreasonable construction. There is no worse legal wrong done where a State refuses to pay its debts, as it promised to do, than where an individual
25 residing in it refuses to pay a promissory note he has given to a citizen of a different State, according to its tenor and effect, and yet the latter is remediless in the courts of the United States unless the consideration of the note exceeds five hundred dollars and costs. Arguments *ab inconvenienti* have no great weight in the construction of statutes; but to hold the right of complainant to sue here would open the door of litigation to every man in Virginia who owed the State a dollar for taxes, and would extend its jurisdiction to that of a justice of the peace. The injunction must be refused, and the bill dismissed; and it will be so ordered.

HUGH L. BOND.

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the above-entitled cause as the same remains on file and entered in my office.

Witness my hand and the seal of said court, this 13th day of September, A. D. 1884.

[SEAL.] M. F. PLEASANTS, *Clerk.*

[Endorsed on cover:] E. Virginia C. C. U. S. No. 941. J. Adair Pleasants, appellant, *vs.* Samuel C. Greenhow, treasurer of the city of Richmond. Filed 19th September, 1884.

114-328

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884.

NO. 941.

J. ADAIR PLEASANTS

vs.

S. C. GREENHOW.

Advanced under Rule 32.

Brief of WM. L. ROYALL.
For Appellant.

WASHINGTON, D. C.:
R. O. POLKINHORN & SON, PRINTERS,
1884.

Supreme Court of the United States.

J. ADAIR PLEASANT
vs.
SAM'L C. GREENHOW. } No. 941.

Brief of Wm. L. Royall for Appellant.

Statement of the Case.

The appellant owed the State of Virginia thirty-six dollars and twenty-five cents as taxes, with which he had been duly assessed for the year 1883. He tendered to the defendant, who is the Treasurer of the City of Richmond, the State's tax receivable coupons in payment of this tax. They were refused, and the Treasurer was about to levy on his property, to compel payment in another medium, when the appellant filed his bill in the Circuit Court of the United States, praying that he should be enjoined from so doing. He stated the foregoing facts, and averred that the defendant refused the coupons, because a certain act of the General Assembly of Virginia commanded him to refuse them, and that he

was about to levy, because a certain other act of her General Assembly commanded him to levy, notwithstanding said tender. He claimed that the Constitution of the United States protected him in his right to pay his tax with the coupons, and that the defendant, in levying on his property after such tender, would be depriving him, under the authority of a State law, of a right secured to him by said Constitution. The defendant filed an answer, in which he admitted the facts to be what the complainant had stated them; but he denied the jurisdiction of the court to entertain the suit. The cause coming on for hearing upon the bill and answer, the court held that it had no jurisdiction to entertain it, and it dismissed the bill for want of jurisdiction. This action of the court is assigned as error.

Argument.

It is necessary to state specifically and in detail, the appellant's claim in order to ascertain precisely the grounds of the court's jurisdiction. The appellant based his claim to the protection of the court upon section 1979 of the Revised Statutes of the United States, which is in the following words:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The appellant contended that this gave him a right to the court's protection, although less than five hundred dollars was involved in the case. The court held that it could not entertain the cause because less than five hundred dollars was involved.

Before proceeding to consider the particular ground upon which the court placed its ruling, it is as well to remark, to some extent, on the specifications of the appellant's claim.

In the first place, what is a right secured by the Constitution of the United States? There are two kinds of such rights—those which the Constitution expressly confers upon the person and those which he derives from some other quarter, but which the Constitution forbids him to be deprived of. An instance of the first is the grant of citizenship to negroes contained in the fourteenth amendment. Prior to the amendment no negro could be a citizen of the United States.

But the amendment has granted to all of them citizenship of the United States, and the negroe's right to citizenship is a right conferred upon him by the Constitution.

As an illustration of the second kind, suppose the convention that framed the Constitution of the United States had put into it a provision of this kind: "Whereas, the people of the United States owe to General George Washington an everlasting debt of gratitude, therefore be it provided, that the State of Virginia, is hereby forever forbidden to disturb him or his successors in the possession and

enjoyment of his Mount Vernon estate." In this case, General Washington's right to Mount Vernon would have come from some source other than the Constitution. But his right to it would have been secured to him by the Constitution. In each case the party's right is as much secured to him by the Constitution as it is in the other. This is the case of a person's right under a contract—under the State's contract, for instance, when she issued her coupons. The taxes payer's right to pay his taxes with the coupons, comes from the State's contract. But when the Constitution forbids the State to impair the obligation of her contract, it secures him in his right. This has been expressly adjugded by this court in two cases.

In *Hartman* vs. *Greenhow*, 102 U. S. R., the court says at page 679, speaking of these coupons, "A contract was thus consummated between the State and the holder of the new bonds, and the holders of the new coupons, from the obligations of which she could not, without their consent, release herself by any subsequent legislation."

Again, the court says, in *Antoni* vs. *Greenhow*, 107 U. S. at pp. 770, 771:

> "The Supreme Court of Appeals of Virginia decided at its November Term, 1872, in *Antoni* vs. *Wright*, that in issuing these bonds the State entered into a valid contract with all persons taking the coupons to receive them in payment of taxes and State dues, and that the act of 1872, so far as it conflicted with this contract, was void. The authority of this case was

recognized in *Wise* vs. *Rogers*, 24 Id., 169; and in *Clarke* vs. *Tyler*, 30 Id., 134, 137, decided in 1878, it was said: 'This decision of *Antoni* v. *Wright* * * * * must be held to be the settled law of this State.' The same questions were decided here in the same way at the October Term, 1880, in *Greenhow* vs. *Hartman*, 102 U. S., 672, and are no longer open in this court. Any act of the State which forbids the receipt of these coupons for taxes is a violation of the contract and void as against coupon-holders."

Again, at page 775, the Court say: "The right of the coupon-holder is to have his coupon received for taxes when offered."

Now of course each of these quotations is no more nor less than to say that the coupon-holder has a right to pay his tax with the coupon, and that he is secured in this right by the Constitution of the United States.

As the coupon-holder's right to pay his taxes with the coupons is secured by the Constitution, that right comes precisely within the terms of section 1979, and if any person attempts to deprive him of it under the authority of a State law, he makes himself liable to its pains and penalties.

Being in terms applicable to *every* case—every case in which it is attempted to deprive a person of a right secured by the Constitution under the authority of a State law—comes within the protection of the section, whether the amount involved in the case be $500, or whether it be less. Section 1979 confers the right of action, and the 16th paragraph

of section 629, provides that the Circuit Court shall have jurisdiction to enforce the right. In other words, it designates the forum in which the complaint is to be made and the wrong redressed.

The appellant's right to the jurisdiction of the court is then made out, and the Court erred in holding that it had no jurisdiction, unless some subsequent act of Congress has taken the jurisdiction away. That this was the case was expressly held by the learned circuit judge. He held that the jurisdiction of the court had been taken away by the first section of the act of March 3d, 1875, which provides: "The Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of $500, and arising under the Constitution or laws of the United States or treaties made, or which shall be made under their authority * * * * or in which there shall be a controversy between citizens of different States." The learned judge held that the effect of this section was to modify section 1979, so that all cases arising under the Constitution, which are money demands, must involve five hundred dollars, or else the Circuit Court can take no cognizance of them. The following is an extract from his opinion:

> "The complainants contend that in all cases arising under the Constitution or laws of the United States, the Circuit Court of the United

> States, under section 1979 of Revised Statutes have jurisdiction without regard to the amount involved. We do not think so. The words of the Act of March 3rd, 1875, that the courts shall have jurisdiction of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution and laws of the United States, * * * * or in which there shall be a controversy between citizens of different States, seem to us to make it necessary that the causes, whether arising at common law, between citizens of different States, or under the Constitution and laws of the United States, should involve an amount exceeding $500, exclusive of costs. * * * * But it is so ordered by Congress, that if the right to be maintained involves a money consideration, before the courts of the United States can entertain it, that consideration must exceed in amount $500, exclusive of costs."

Since the court has certified that the complainants contended that in all cases arising under the Constitution or laws of the United States, the Circuit Courts of the United States, under section 1979 of Revised Statutes have jurisdiction without regard to the amount involved. I cannot, of course, gainsay the statement. But if I made that contention at that time, it was the first time I ever made it, and it shall be the last. I wish distinctly to state that I contend for no such proposition here. The proposition that I contend for here, is that under section 1979, *the Circuit Courts have jurisdiction without regard to the amount involved, in*

all cases in which a person ACTING UNDER COLOR OF A STATUTE, ORDINANCE REGULATION CUSTOM OR USAGE OF A STATE OR TERRITORY, *subjects any other person to the deprivation of any rights guaranteed the latter by the Constitution or laws of the United States*, and that under the Act of March 3rd, 1875, they have jurisdiction in addition, of any possible case arising under the Constitution or laws of the United States, if the additional case involve $500..

In enacting section 1979, Congress simply conferred upon the Circuit Courts a jurisdiction which the Supreme Court had had from the organization of the government. It gave the suitor the right to resort in the first place to the Circuit Court if a State attempted to deprive him of his constitutional right, whether pecuniary or other, instead of forcing him to go up by successive stages through the State Courts to the Supreme Court. The Supreme Court had always had jurisdiction of every case provided for in section 1979, whether pecuniary or other, but by section 1979, the suitor was given a right to resort in the first instance, in the cases provided for by it, whether pecuniary or other, to the Circuit Court, which was, of course, a most beneficial one to him. He had had this right of resorting to the Supreme Court in pecuniary claims under the Constitution, as well as in other, and in pecuniary claims, without reference to the amount involved. After section 1979, he had a right to resort to the Circuit Court in the first instance, where

he was deprived, by State authority, of any right secured by the Constitution, whether it was pecuniary or not, and without regard to the amount of the claim.

The proposition of the learned Circuit Judge may be thus stated: Because Congress has now given jurisdiction to the Circuit Courts of any case that arises under the Constitution that involves $500, therefore it has taken away from them jurisdiction of constitutional cases that are pecuniary *unless* they involve $500, *although* the complaint may be that a money right secured by the Constitution is taken away under authority of a State law. This is a plain *non sequitur* since there may be cases arising under the Constitution that involve $500, that are not cases in which persons are deprived of money rights secured by the Constitution under authority of a State law. For the act of 1875 to have this effect on section 1979, there ought to be either express words of repeal, or such an inconsistency between the two as to involve an absurdity in permitting them both to stand.

There are no words of express repeal, and whether this inconsistency exists, I will remark on presently.

Meantime a word on the effect of such a construction, since it involves both absurdities and very serious consequences.

By section 699 of the Revised Statutes, it is provided that the Supreme Court shall have jurisdiction to review any final judgment or decree by writ of error or appeal, without regard to the sum or value

in dispute in five classes of cases. The fourth class is as follows:

> "*Fourth.* Any final judgment at law or final decree in equity of any Circuit Court or of any District Court acting as a Circuit Court in any case brought on account of the deprivations of any right, privilege or immunity secured by the Constitution of the United States, or of any right or privilege of a citizen of the United States."

The case under review is a case brought on account of the deprivation of a right secured by the Constitution, therefore an appeal is taken in it without regard to the sum or value in dispute. We thus have it that the Supreme Court can review on appeal a decision in a case which cannot be instituted in the lower court.

It is true it may be said that in modifying section 1979 by the act of 1875, Congress necessarily modified the jurisdiction of the Supreme Court to make it conform to its modification of section 1979. But what necessity is there for resorting to so forced a construction as this? Where is the evil to be cured by such a forced construction?

Again, the modifying act was approved March 3d, 1875. On March 1st, 1875, Congress enacted the civil rights act which provides for the equal rights of all persons in hotels, theatres, &c. The fifth section of this act provides for an appeal in all cases mentioned by it without regard to the amount involved. Section 1979 was a part of the series of civil rights acts of which that of March 1st, 1875

was the last. Is it probable Congress would have been taking away appeals by implication in small cases when it had been uniformly providing for them, and only two days before it passed the act claimed to have taken them away, it had deliberately increased them in a multitude of cases?

But the construction contended for will deprive multitudes of persons of a right that they supposed the laws of the United States had finally and definitely clothed them with; as I have remarked, section 1979, was originally part of the civil rights legislation enacted by Congress after the war. While as was held by Mr. Justice Field in the San Mateo case and the Santa Clara case, this legislation was not intended for the benefit of negroes only, but for the benefit of all persons; yet we all know that the condition of the Southern States at that time, and the situation of the negro population was what inspired and gave rise to it all. That is, it was intended primarily for the protection of the negroes, but not exclusively. Now, it is matter of common knowledge that few negroes, all of whom had just emerged from slavery, had as much property in March, 1875, as was worth five hundred dollars. But the construction contended for will deprive the negroes for whose benefit section 1979 was mainly intended, of all protection in the Circuit Courts for constitutional rights, because none of them own property enough to sue under the act of March, 1875.

Again, the construction of the learned Circuit

Judge, gives the man whose quarrel involves $500 or more, a great advantage over the poor man who has the misfortune to have only two hundred involved in his, and has been robbed by his State. The first one can sue originally in the Circuit Court and have his cause determined promptly by a tribunal organized especially to try his case, while the second must try his in the State Court, presumably biassed in favor of the laws of the State, and can only get the judgment of a United States Court by appealing to the Supreme Court after years of delay, and after a State jury, prejudiced likewise in favor of the State laws have estimated what his damages are, while the other construction gives the poorest man who has been robbed of his constitutional right by his State, a right to resort to the Circuit Court and obtain prompt redress. There ought to be some very cogent reason for giving the rich man such an advantage as this over the poor one who has been the victim of his States oppression.

But, I suppose, if the rules of construction require the construction given by the learned Circuit Judge, it must be given, whatever absurdities it may involve, or whatever injustice it may work. Do the rules of construction require his construction?

As already remarked, this construction should not be given unless the later statute contains express words of repeal, or unless the two cannot stand together without involving an absurdity. The later statute contains no words of repeal; does the standing of the two involve any absurdity? I answer

most emphatically, no! each has its own separate function to perform which it can perform without in any manner whatever trenching upon the functions of the other.

Section 1979 is intended to operate on those who, acting under State authority, deprive any person of rights secured by the Constitution.

Now this is a very definite and distinct mission. It is one aimed at those who commit trespasses and seek to plead the authority of their State for their protection. But the act of March 3d, 1875, is wider in its scope. It aims at all cases that arise under the Constitution, whether they be cases in which the defendant seeks to shelter himself behind the authority of his State, or whether they be not if $500 be involved. Those words "arise under the Constitution" have a perfectly distinct and settled meaning. They are settled by the repeated decisions of this court to mean that a case "arises under the Constitution" if it be necessary to construe the Constitution, in order to give judgment in the case.

Cohens vs. *Virginia*, 6 Wheat, page 379;
Osborne vs. *The Bank*, 9 Wheat., 822;
Gold Washing Co., vs. *Keyes*, 96 U. S., 201;
R. R. Co., vs. *Mississippi*, 102 U. S., 141.

It may be asked does not this settled meaning of these words enable parties to bring all suits into the Federal Courts by averring that it is necessary to construe the Constitution in each case in order to decide it. But the dilemma suggested is more apparent than real. It undoubtedly does enable parties

to bring all suits in the Federal Courts by making this averment. But the distinction lies just here. If the case be not one that really involves a construction of the Constitution, that is, if the parties right does not really depend upon the Constitution, the Court refuses to pass judgment on the merits, and dismisses the case for want of jurisdiction. If the parties right really depends upon the Constitution, as soon as the Court ascertains that fact it retains it, and passes judgment on the merits.

Now, if there be any cases that "arise under the Constitution" which are not cases in which a party is deprived of a right by authority of a State law, then the act of March, 1875, has its own field to labor in which section 1979 cannot invade. Are there any such? I answer, most emphatically, yes.

Suppose Congress should grant a man living in Illinois a pension of $500 or more, and after it reached the pensioner's post office the mail was robbed, and the pensioner was able to put his finger on the robber. They would both be citizens of Illinois, but could not the pensioner sue the robber in the Federal Court? Unquestionably he could; for, in order to give judgment for him, the court would have to inquire, first, whether the act of Congress conferred a title to the money upon the plaintiff, and, secondly, whether the Constitution conferred upon Congress power to enact the statute. Here would be a case arising both under the Constitution and an act of Congress which would not be a case in which a person was deprived of a right under the authority of a State law.

Again. Suppose the United States, being the owner of land situated in Illinois, should grant a man, as a pension, fifty acres, worth $5,000, and some of his neighbors, without any authority of any State law therefor, should evict him and take possession of the land and keep him off. Here is a case in which, to regain possession of his property, it would be necessary for him to maintain an action of ejectment in some court. In maintaining his action of ejectment, he must make out his own title, and his title depends upon an act of Congress, and the Constitution must be examined to determine whether Congress had power to enact the statute. Here would be a case arising both under an act of Congress and under the Constitution. Could not the plaintiff maintain his action in the Circuit Court under the act of 1875? And yet it would not be a case of a person being deprived of a constitutional right under authority of a State law.

Again: In the *Slaughter-house Cases*, 17 Wall., a number of instances of privileges inhering in the citizen of the United States, by virtue of the Constitution, are stated.

Suppose that the neighbors of some citizen, without any State authority therefor, should debar him from the possibility of exercising some one of these privileges. Could not the citizen assert his claim against these neighbors in the Circuit Court? Yet it would be a case arising under the Constitution, which would not be a case in which a person was deprived of a constitutional right under State au-

thority. Indeed, it would be a bold man who would assert that every case that arises under the Constitution is a case in which a party is deprived of a constitutional right by State authority. But unless it can be made out that these two propositions are the same, the decision of the learned Circuit Judge has not a leg to stand on.

If there be cases to which section 1979 is applicable, to which the Act of March 3rd, 1875, is not applicable, and cases on which the Act of March 3rd, 1875 can act, which section 1979 does not reach, then it is clear that each has its own field, and there is no sort of inconsistency between them, and that they must both stand.

To conclude: It is undoubtedly true that all cases in which a person acting under a State law, deprives another of a constitutional right, are cases arising under the Constitution; but it is not true that they are the only cases that arise under the Constitution. There may be others, and many others. But what reason is there that the Circuit Court should not have jurisdiction of every case, however large or small, that arises under the Constitution, by reason of the fact that one person wishes to deprive another of a constitutional right, under the authority of a State law, but should only have jurisdiction of those cases that arise under the Constitution, where no State law is involved, that have $500 or more involved? It may be that there is no very strong reason apparent for making such a distinction; but whether there be or not, is it not

a case of *ita lex scripta est?* Who can deny that at this very moment, events are so shaping themselves as to show a profound insight into the future on the part of those who made the distinction?

I have purposely confined myself to a discussion of the question of jurisdiction, because I understand it to be the order of the court, that no other question is to be discussed, when a case is advanced under Rule 32. If any other questions are to be passed upon, I most respectfully ask leave to be heard on them.

WM. L. ROYALL,
For Appellant.

114-323

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.—No. 941.

J. ADAIR PLEASANTS,
Appellant,
vs.
SAMUEL C. GREENHOW, Treasurer of the City of Richmond.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR APPELLANT.

WAGER SWAYNE,
D. H. CHAMBERLAIN,
WM. B. HORNBLOWER,
Of Counsel.

C. G. BURGOYNE'S "Quick" Print, 146-150 Centre St., N. Y.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

J. ADAIR PLEASANTS

AGAINST

SAMUEL C. GREENHOW, Treasurer of the City of Richmond.

No. 941.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

This is an appeal from the decree of the Circuit Court denying the application of the appellant for an injunction against the appellee, and dismissing the bill of complaint *for want of jurisdiction.*

STATEMENT OF THE CASE.

J. Adair Pleasants, the appellant, filed his bill of complaint in equity in the Court below February 25, 1884, in which he alleged in substance:

That the complainant was the owner of property in the State of Virginia, City of Richmond, liable to assessment and taxation under the laws of the State; that the same was assessed, and taxes to the amount of $36.25 had been laid upon said property; that by the statute of Virginia, the tax collector was ordered to collect all taxes unpaid prior to the 1st day of December in every year, by levy, distress or other appropriate proceedings.

That the defendant, Greenhow, Treasurer of the City of Richmond, and Collector of State taxes, was charged with the duty of collecting the said taxes by the laws of Virginia.

That in February, 1884, the complainant tendered to the defendant, in payment of his taxes of $36.25, one coupon cut from a bond of the State of Virginia, issued under the Act of March 30th, 1871, for $30, and $6.25, in lawful money of the United States; that the defendant refused to receive said coupon and money for the reason that the Act of the State of Virginia of January 26th, 1882, forbade him to receive them; that thereupon the defendant informed the complainant that he should proceed to levy and collect from the complainant's personal property the amount of said taxes; and that the defendant would do so unless he was restrained therefrom by the Court.

The complainant averred his readiness to deliver the said coupon and money to the said collector, and brought the same into Court to abide its order.

The complainant further alleged that the State of Virginia, when it issued the said coupon, entered into a valid and binding contract to receive the same in payment of all dues and demands to the State, and that it was the complainant's right, upon the tender of such coupon, to be free from all further attempts to collect the said tax, and that the acts of the State of Virginia, which authorized the collector to refuse the tender of coupons, and to proceed to levy after such tender, were void, as repugnant to section 10 of article 1 of the Constitution of the United States; and as a deprivation of a right secured to the complainant by the Constitution of the United States.

The complainant then prayed that the defendant might be required to answer the bill, and might be enjoined and restrained from levying upon the complainant's property for said taxes, and for such further and general relief as to equity might seem agreeable.

To this bill the defendant filed a demurrer and answer by way of demurrer, in which he set up:

1st. That the bill was insufficient in law for the relief claimed.

2d. That this Court has no jurisdiction in the case.

3d. That a State cannot be sued without her consent, and that the State of Virginia has not consented to be sued in this Court in this case.

4th. That the Acts of the State of Virginia of January 14th, 1882, and January 26th, 1882, have provided a mode and forum in which all suits are to be brought concerning coupons, and that the present suit is not brought in accordance with those acts.

5th. That this suit affects the collection of the public revenues of the State of Virginia, and should not be entertained by this Court, but that if the defendant should be compelled to answer the bill, he says that, without waiving his demurrer, he answers:

FIRST. That the allegations of fact contained in the bill are true, but he denies the right of the complainant to the relief prayed for.

For further answer he insists, that the complainant is not entitled to the relief sought, because the taxes of complainant were due prior to the 1st December, 1883, and the tender was not made until the 22d February, 1884.

SECOND. That this suit cannot be maintained, because the complainant has not complied with the provisions of the Act of January 26th, 1882, in respect to the payment of taxes in money, under protest, &c.

THIRD. That the coupons tendered are unverified, and hence plaintiff has not conformed to the provisions of the Act of 14th January, 1882.

Finally, the defendant affirms that both the acts referred to, of the State of Virginia, are constitutional, and that all proceedings by the complainant must conform to these acts, and denies that the complainant would be deprived, by the levy and sale of his property, of any rights secured to him by the Constitution of the United States.

In which demurrer, the plaintiff joined, and replied generally to the defendant's answer.

Thereupon, on the 2d September, 1884, the following decree was made in the Circuit Court:

"This cause came on to be heard on this day upon the bill of the complainant and the demurrer, and answer thereto of the defendant, and was argued by counsel and submitted on briefs. On consideration whereof, it is adjudged, ordered and decreed that the prayer of the bill for an injunction be denied, and that the bill of the complainant be dismissed for want of jurisdiction of this Court to entertain the same."

From this decree the present appeal has been taken.

An opinion by the Circuit Judge was filed in this case, September 19th, 1884, and appears in the record (p. 7, fol. 15).

The substance of this opinion is that, under section 1 of the Act of March 3, 1875, in all cases involving a money consideration, that consideration must exceed $500, exclusive of costs; and that the Act of March 3, 1875, being later in date than section 1979, must be held to govern that section.

Specification of Errors.

The appellant specifies as error in the decree below:

1. That the Court below dismissed the appellant's bill of complaint "for want of jurisdiction of the Court to entertain the same."

2. That the Court below refused the prayer of the appellant therein for an injunction.

ARGUMENT.

I.

The Court below erred in dismissing the bill for want of jurisdiction.

The jurisdiction of the Circuit Court, prior to the Act of March 3, 1875, was fixed by section 629 of the U. S. Revised Statutes.

This section consists of twenty-one distinct paragraphs, each paragraph specifying a *separate ground of jurisdiction.*

The sixteenth paragraph of section 629 is as follows:

"Sixteenth. Of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage, of any State, of any right, privilege or immunity, secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

It is under this paragraph that the appellant claims that the Circuit Court had jurisdiction to entertain the bill of complaint in this case.

Section 1979 of the U. S. Revised Statutes, Title XXIV., is as follows:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

It is under this section that the appellant brings his bill in this case.

Two main questions seem to arise in this case, which will be discussed in the following order:

FIRST. Does section 1979, above quoted, give the appellant the right to maintain this bill?

SECOND. If yes, does the 16th paragraph of section 629, above quoted, confer jurisdiction on the Circuit Court to entertain this bill?

A.

Section 1979, above quoted, gives the appellant a right to bring this bill of complaint against the appellee.

Section 1979 is the first section of the Act of April, 20, 1871, entitled "An Act to enforce the provisions of the fourteenth amendment to the Constitution of the United States, and for other purposes," (*14 Stat. at Large, p. 27*).

This section appears in the Revised Statutes, under the title, "Civil Rights," and it is to be observed that the statutes from which the provisions of this title are derived, were passed at several different periods.

The Act of April 9th, 1866 (*14 Statutes at Large, p. 27*), entitled, "An Act to protect all persons in the United States, in their Civil Rights, and to furnish the means for their vindication," as well as the Act of April 20, 1871, entitled, "An Act to enforce the provisions of the fourteenth Amendn ent to the Constitution of the United States, and for other purposes" (*17th Statutes at Large, p. 13*), are

also, each of them, "Civil Rights" Acts, and are incorporated into Title XXIV. of the Revised Statutes.

The Act of March 1st, 1875, entitled, "An Act to protect all citizens in their Civil and Legal rights," (Supplement to Revised Statutes, Volume 1, p. 148), is the Act most commonly known as the "Civil Rights Act," being the bill which was prepared and pressed upon Congress by the late Senator Sumner during his lifetime, and afterwards passed on the above date, March 1st, 1875, and is the Statute which gave rise to the "*Civil Rights Cases*," 109 U. S., 3.

Section 1979 gives the right to "*an action at law, suit in equity or other proper proceeding*," whenever any person is deprived under color of a State statute, &c., of any rights, &c., "secured by the Constitution and laws."

The first inquiry, then, is—Is the right of which the complainant alleges he is deprived, a right "*secured to him by the Constitution and laws?*"

The right which the complainant asserts and of which he alleges he is about to be deprived is, in brief, *the right to pay his taxes in coupons of the bonds of the State of Virginia issued under the Act of March 30, 1871;* or the right to hold his property exempt from distress or levy for taxes after tender of the amount due.

It is wholly undisputed that under the Act of March 30, 1871, the State of Virginia did issue her bonds, bearing coupons, which, by their terms, were made "receivable in payment of all taxes, dues and demands due the State;" and that the coupon tendered by the complainant in the present instance is one of such coupons.

It was decided by this Court in the case of *Hartmann vs. Greenhow*, 102 U. S., 672, that this act of the Legislature of Virginia "consummated a contract between the State and the holders of the bonds, and the holders of the coupons, from the obligation of which she could not, without their consent, release herself by any subsequent legislation. She thus bound herself not only to pay the bonds when they became due, but to receive the interest coupons from the bearer at and after their maturity, to their full amount, for any taxes or dues by him to the State."

In the case of *Antoni vs. Greenhow*, 107 U. S., 769, this Court said: "The Supreme Court of Appeals of Virginia decided at its November Term, 1872, in *Antoni vs. Wright*, 22 Grat., 833, that in issuing these bonds the State entered into a valid contract with all persons taking the coupons to receive them in payment of taxes and State dues, and that the Act of 1872, so far as it conflicted with this contract, was void." The authority of this case was recognized in *Wise vs. Rogers*, 24th *Id.*, 169; and in *Clark vs. Taylor*, 30th *Id.*, 134–137, decided in 1878, it was said: "This decision of *Antoni vs. Wright* must be held to be the settled law of this State." The same questions were decided in the same way here at the October Term, 1880, in *Greenhow vs. Hartmann*, 102 U. S., 672, and are no longer open in this Court. Any Act of the State which forbids the receipt of these coupons for taxes is a violation of the contract and void, as against coupon holders."

Again, this Court, in the same case, says (p. 775): "The right of the coupon-holder is *to have his coupons received for taxes when offered.*"

This is the right asserted by this complainant, namely: the right to pay his taxes in Virginia in coupons of Virginia bonds issued under the Act of 1871; or to hold his property exempt from any further levy after tender in coupons.

This right was first conferred by the State Statute; but, when the right was once conferred and became, so to speak, vested in the individual coupon-holder, the further right of such coupon-holder to be exempt from the impairment of the right thus granted by the State Statute *was secured by the Constitution of the United States.*

This latter right—to be exempt from the impairment of his contract—is thus plainly a right secured to him by the Constitution of the United States.

Under the Constitution of the United States every citizen who is a party to a contract is secured in his rights under such contract by the provision of the Constitution which forbids any State to "pass any law impairing the obligation of contracts."

It is undoubtedly true that the ordinary personal and pecuniary rights of citizens of the United States are derived from, and are

secured by, the Constitution and laws of the several States, but it is also true that there are rights which depend for their existence or protection upon the Federal Constitution. Such, for example, are the rights secured to the citizen by the constitutional inhibition to the States from passing any bill of attainder, or *ex post facto* law, or law impairing the obligation of contracts.

The contract itself, the rights secured and the obligations imposed thereby, are the result of the laws of the State where the contract is entered into or where it is to be executed, but the additional right to have the contract unimpaired by State laws is a right which is expressly conferred and secured by the Constitution of the United States, *a right which would not exist or belong to the citizen but for the Constitution of the United States.*

It is common knowledge that the provision of the Constitution here in question was adopted for the purpose of securing to all citizens *a right which was not secured under State laws.*

Edwards vs. Kearzey, 96 U. S., 604, 605.

The *Slaughter-House Cases*, 16 Wall., 36, declare this right to be one "secured by the Constitution of the United States."

In those cases the Court in speaking of the "privileges and immunities" of citizens of the States, says (p. 77):

"The constitutional provision there alluded to (*Art. 4, Sec. 2*) did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them no security for the citizens of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens." * * *

It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments, no claim or pretense was set up that those rights depended on the Federal Government for their existence or protection, *beyond the very few express limitations which the Federal Constitution imposed upon the States*—such, for instance, as the prohibition against *ex post facto* laws, bills of attainder and LAWS IMPAIRING THE OBLIGATION OF CONTRACTS."

In other words, the express limitation imposed by the Constitution of the United States upon the States, forbidding the impairment of the obligation of contracts, *does confer a right* which does

not depend for its existence or protection upon the States, but *upon the Constitution of the United States.*

The recent "Civil Rights Cases" (109 U. S., 3), are an authority to the same effect. These cases arose under the 1st and 2d Sections of what is called the "Civil Rights Act," passed March 1, 1875 (supplement to Rev. Stats., vol. I., p. 148), entitled "An Act to protect all citizens in their civil and legal rights." These two sections undertook to provide that the enjoyment of "full and equal accommodations, advantages, facilities and privileges in public conveyances and theatres * * * should not be subject to any condition applicable only to citizens of a particular race or color or who had been in a previous condition of servitude. In other words, it was the purpose of the law to declare that in the enjoyment of the accommodations and privileges of inns, &c., no distinction should be made between citizens of different race or color or between those who have or those who have not been slaves" (pp. 9 and 10).

The question was as stated by the Court (p. 9): "Has Congress constitutional power to make such a law?" and it was held that Congress had not such power either under the thirteenth or fourteenth Amendment, because *first*, the thirteenth Amendment relating only to slavery and involuntary servitude and the denial of equal accommodations in inns, &c., is not slavery, nor involuntary servitude; and *second*, that the fourteenth Amendment is prohibitory upon the States only, and that the legislation authorized to be adopted by Congress for enforcing it is not direct legislation on the matters respecting which the States are prohibited from making or enforcing certain laws or doing certain acts, but is corrective legislation such as may be proper for counteracting or redressing the effect of such laws or acts.

At page 11, the Court says:

"Positive rights and privileges are undoubtedly secured by the fourteenth Amendment, but they are secured by the way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect."

On page 12, the Court says:

"An apt illustration of this distinction may be found in some of

the provisions of the original Constitution. Take the subject of contracts for example. The Constitution prohibited the States from passing any law impairing the obligation of contracts. This did not give to Congress power to provide for the general enforcement of contracts nor power to invest the Courts of the United States with jurisdiction over contracts so as to enable parties to sue upon them in those Courts. It did, however, give power to provide remedies by which the impairment of contracts by State legislation might be counteracted and corrected, and this power was exercised. The remedy which Congress actually provided was that contained in the 25th section of the Judiciary Act of 1879 (1st Statutes at Large, 85), giving to the Supreme Court of the United States jurisdiction by writ of error to review the final decisions of State Courts whenever they should sustain the validity of a State statute or authority alleged to be repugnant to the constitution or laws of the United States. By this means, if a State law was passed impairing the obligation of contracts, and the State tribunals sustained the validity of the law, this mischief could be corrected in this Court. The legislation of Congress and the proceedings provided for under it, were corrective in their character. No attempt was made to draw into the United States Courts the litigation of contracts generally, and no such attempt would have been sustained. We do not say that the remedy provided was the only one that might have been provided in that case. Probably Congress had power to pass a law giving to the Courts of the United States direct jurisdiction over contracts alleged to be impaired by a State law, and under the broad provision of the Act of March 3d, 1875, Chap. 137 (18th Stat., 470), giving to the Circuit Court jurisdiction in all cases arising under the Constitution and laws of the United States, it is possible that such jurisdiction now exists; but, under that or any other law, it must appear, as well by allegation, as proof at the trial, that the Constitution had been violated by the action of the State Legislature. Some obnoxious State law passed, or that might be passed, is necessary to be assumed in order to lay the foundation of any Federal remedy in the case; and for the very sufficient reason that the constitutional prohibition is against State laws impairing the obligation of contracts."

The reasoning here seems to sustain our present claim in all respects, for it is here held—

FIRST. That the constitutional clause which forbids States to im-

pair the obligation of contracts, *gives to Congress power to provide remedies by which the impairment of contracts by State legislation may be counteracted and corrected.*

SECOND. That the remedy by writ of error to review State decisions sustaining the validity of laws alleged to impair the obligation of contracts, *is not the only remedy warranted under this constitutional provision.*

THIRD. That *probably* Congress has power to pass a law giving to the Courts of the United States *direct jurisdiction over contracts alleged to be impaired by a State law.*

FOURTH. That *possibly*, under the jurisdictional section of the Act of March 3, 1875, the Circuit Courts of the United States *have such jurisdiction now.*

If these positions taken in the Civil Rights Cases are not strictly *parts of the decision* in those cases, they are at least well considered remarks made in the course of the reasoning which sustains those decisions, and as such may be appealed to as strong arguments, if not as authority.

What the Court here expresses the opinion that Congress may do, namely: "*Give to the Courts of the United States direct jurisdiction over contracts alleged to be impaired by a State law*," is more than is attempted to be done by section 1979. That section only provides a remedy for the deprivation of a right secured by this constitutional provision by "an action at law, suit in equity or other proper proceeding," but assumes no direct jurisdiction over the contract.

At page 16 the Court refers to the Civil Rights Bill originally passed April 9, 1866 (14 Stat. 27, ch. 31), and says: "This law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. * * * The Civil Rights Bill here referred to is analogous in its character to what a law would have been under the original Constitution declaring that the validity of contracts should not be impaired, and that if any person bound by a contract should refuse to comply with it under color or pretense that it had been rendered void or invalid by a State law, he should be liable to an action upon it in the Courts of the United States, with the addition of a penalty for setting up such an unjust and unconstitutional defense."

Here the Court declares a law constitutional which it further declares is *analogous in its character* to what a law would have been under the original Constitution, declaring that the validity of contracts should not be impaired, and that if any person bound by a contract should refuse to comply with it under color or pretense that it had been rendered void or invalid by a State law he should be liable to an action upon it in the Courts of the United States "with the addition of a penalty for setting up such an unjust and unconstitutional defense."

The Court here describes with precision the features of section 1979, which is a law making any person liable to an action who shall deprive any person of any right "secured to him by the constitution or laws," under "color or pretense of a State law."

If it can be affirmed that this citizen of Virginia has a constitutional right to pay his taxes in the coupons tendered here, under the authority and reasoning of the Civil Rights cases, can it be denied that Congress has the right to *correct* any State legislation impairing that right, by giving an action against the person who violates or impairs that right under color of such State law?

Is not section 1979 strictly *corrective* legislation intended and operating to correct State legislation, which seeks to enable its officers to deprive a person of a constitutional right?

Again, at page 23, the Court says: "We must not forget that the province and scope of the Thirteenth and Fourteenth Amendments are different, * * * and the powers of Congress under them are different. What Congress has power to do under one, it may not have power to do under the other. Under the Thirteenth Amendment it has only to do with slavery and its incidents. Under the Fourteenth Amendment it has power to counteract and render nugatory all State laws and proceedings which have the effect to abridge any rights or immunities of citizens of the United States, or to deprive them of life, liberty or property without due process of law, or to deny to any of them the equal protection of the laws."

Here again it is said that under the Fourteenth Amendment Congress has "power to counteract and render nugatory all State

laws and proceedings *which have the effect to abridge any rights or immunities of citizens of the United States.*"

If, therefore, the right to pay taxes in Virginia with coupons of State bonds is a CONSTITUTIONAL right, is not section 1979 such *corrective* legislation as is warranted by the Fourteenth Amendment?

Our conclusions are that under the Slaughter House cases and the Civil Right cases—

FIRST. That the right to pay taxes in Virginia with coupons of the bonds of 1871 is a right secured by the original Constitution.

SECOND. That Congress would have been warranted under the original Constitution in adopting legislation calculated to protect and enforce this right against hostile State legislation.

THIRD. That under the Fourteenth Amendment especially, Congress has such power.

B.

Section 1979, in terms, gives the remedy of "An action at law, suit in equity, or other proper proceeding" against "every person who under color of any statute, &c. subjects or causes to be subjected, any citizen, &c., to the deprivation of any rights," &c.

The suggestion has been made in the present case that the complainant has not yet been deprived of his right to pay taxes in coupons, but that he only sets forth that the deprivation is apprehended or threatened by the defendant.

Such a construction of the law would be narrow and strict to the last degree.

The statute here in question is in every sense *remedial*, and should be construed so as to liberally effectuate its purpose.

It is certainly in general an incident of any right to bring a suit in equity to redress a wrong, that if the wrong is foreseen and apprehended or threatened, a bill for injunction will lie.

The ordinary maxims of construction apply here.

Thus in *United States vs. Saunders*, 22 Wall., 492, it was said, "A statute is to be interpreted not only by its exact words, but also by its apparent general purpose," and again, in *United States* vs.

Kirby, 7 Wall., 486, it was said, "All laws should receive a sensible construction."

The cardinal rule of construction is that "it is the business of the judges so to construe the act as to suppress the mischief and advance the remedy." *1 Black. Com., p. 87.*

C.

It was suggested in the court below that so far as the complainant's right depended on the fourteenth Amendment, there was an intimation in the Slaughter House cases that that amendment applies only to the rights of the newly-emancipated negroes.

It is true that in the Slaughter House cases, at page 81, Judge MILLER says: "The existence of laws in the States where the newly emancipated negroes reside, which discriminated with gross injustice and hardship against them as a class was the evil to be remedied by the clause, and by it such laws are forbidden."

He also says upon the same page: "We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency that a strong case would be necessary for its application to any other."

Judge MILLER also says, at page 72: "We do not say that no one else but the negro can share in this protection."

It is, of course, to be remembered that these expressions are general remarks not necessary to the decision of the case, and must be weighed accordingly.

But the question of the applicability of the Fourteenth Amendment to persons, natural and artificial, other than negroes, has since been considered and decided in the case known as "The Railroad Tax Case," County of San Mateo vs. Southern Pacific R. R. Co., in the U. S. Circuit Court for the District of California, 8th Sawyer, 238.

This case was most elaborately argued before FIELD and SAWYER JJ., the opinion being delivered by Judge FIELD. The present question arose directly in that case,—Is the Fourteenth Amendment limited in its operation to negroes? The defendant company claimed its protection. The plaintiff argued that the Amendment applied only to negroes. JUDGE FIELD, page 247 says: "The plaintiff contends that the Fourteenth Amendment of the Constitution of the U. S. was adopted to protect the newly made citizens of the African race in their

freedom, and should not be extended beyond that purpose, and that corporations are not persons within the meaning of the Amendment. * * * The Fourteenth Amendment of the Constitution in declaring that no State shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the State which can touch the individual *or his property*, including among them that of taxation. By equal protection of the laws is meant equal security under them to every one on similar terms, in his life, his liberty, his property and in the pursuit of happiness. * * * Is the defendant, being a corporation, a person within the meaning of the Fourteenth Amendment so as to been entitled in respect to its property to the equal protection of the laws? The learned counsel for the plaintiff and the Attorney-General of the State take the negative of this question, and assert with much earnestness, that the Amendment applies and was intended to apply only to the newly made citizens of the African race, and should be limited to that protection. It is undoubtedly true that the Amendment had its origin in a purpose to secure to those newly made citizens the full enjoyment of their freedom. When the Amendment abolishing slavery and involuntary servitude was adopted there were men in Congress who believed it was intended to make every one born within the United States a free man, and as such to give to each the right to pursue his happiness in the ordinary vocations of life, subject to no restraint except such as affected others, and to enjoy equally with them the fruits of his labor. * * * Though the occasion of the Amendment was the supposed denial of rights in some States to newly made citizens of the African race, and the supposed hostility to Union men, *the generality of the language used extends the protection of its provisions to persons of every race and condition against discriminating and hostile State action of any kind.*"

After referring to the provision of the Constitution prohibiting legislation by States impairing the obligation of contracts, and Marshall's opinion in the Dartmouth College case, Judge FIELD continues:

"Following that authority we cannot adopt the narrow view for which counsel contend and limit the obligation of the prohibition of the Fourteenth Amendment to legislation touching members of the enfranchised race. It does not, indeed, place any limit upon the subjects in reference to which the States may legislate. It does not interfere with their police power. Upon any matter upon which previously to its adoption they could act, they may still act. They

could legislate now, as they always could, to promote the health, good order and peace of the community, to develop their resources, increase their industries and advance their prosperity; but it does require that in all such legislation hostile and partial discrimination against any class or person shall be avoided; that the State shall impose no greater burden upon any one than upon others of the community under like circumstances, nor deprive any one of rights which others similarly situated are allowed to enjoy. It forbids a State to lay its hand more heavily upon any one than upon another under like conditions. It stands in the Constitution as a perpetual shield against all unequal and partial legislation by the States and the injustice which follows from it, whether directed against the most humble or against the most powerful, against the laborer from China, or the envied master of millions."

In this case it was held that private corporations are *persons* within the meaning of the 1st Section of the Fourteenth Amendment and are entitled, so far as *their property* is concerned, to the equal protection of the laws; and the demurrer of the defendants to the complaint of the County of San Mateo for a recovery of State and county taxes, claimed to be due from the defendant, was sustained upon the ground that the levying of the taxes in question was an unlawful discrimination contrary to the provisions of the Fourteenth Amendment.

In this case Judge SAWYER, the Circuit Judge, delivered an elaborate opinion sustaining the arguments and conclusions of Judge FIELD.

That the Fourteenth Amendment applies *to other than negroes*, namely, *to Chinese*, was expressly held by SAWYER, Circuit Judge, in the case of *In re* Ah Chong, 6 Sawyer, 451, and by Mr. Justice FIELD, in Ho Ah Kow vs. Nunan, 5 Sawyer, 552.

II.

From the opinion of the Court below it appears that it was there considered that the Act of March 3, 1875, limits the jurisdiction of the Circuit Courts in such cases as the present to cases involving the amount of $500, and that upon this ground the Court below had no jurisdiction.

Prior to the Act of March 3, 1875, the jurisdiction of the Circuit Courts was fixed by Section 629 of the Revised Statutes of the United States, consisting, as has been said, of twenty paragraphs.

This section consists of the original provisions of the Judiciary Act of 1789, and such additional legislation as has been had, from time to time since, affecting the jurisdiction of the Circuit Courts.

Each of these paragraphs confers a separate and distinct branch of jurisdiction. Each is independent of the others.

It seems at once obvious that the limitation of $500, which is only expressed in the *first* and *second* paragraphs, does not apply to any other paragraph. It is an exact case of *expressio unius exclusio alterius*.

So long as Section 629 remained unchanged by subsequent legislation, it cannot surely be maintained that the limit of $500 affected the jurisdiction except in cases falling under the *first* and *second* paragraphs.

The repetition of this limit in the *second* paragraph excludes the idea that its presence in the *first* paragraph affects all the subsequent paragraphs.

But the Court below seems to have considered that at least the *Act of March 3, 1875*, fixed the limit of $500 to the jurisdiction of the Court in this case.

The only part of the Act of March 3, 1875, which affects the *jurisdiction of the Court* is the *first half* of the *first section*, which is in these words:

"That the Circuit Courts of the United States shall have original cognizance, concurrent with the Courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of $500, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which the United States are plaintiffs or petitioners; or in which there shall be a controversy between citizens of different States; or a controversy between citizens of the same State claiming lands under grants of different States; or a controversy between citizens of a State and foreign States, citizens or subjects; and shall have exclusive cognizance of crimes and offenses cognizable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the District Court of the crimes and offenses cognizable therein."

The corresponding parts of section 629 of the Revised Statutes consist of the first, second, third and twentieth sections, each of which is derived from the judiciary Act of September 24, 1879. These sections when read together are as follows:

"The Circuit Courts shall have original jurisdiction as follows:

"FIRST. Of all suits of a civil nature at common law or in equity where the matter in dispute, exclusive of costs, exceeds the sum or value of $500, and an alien is a party, or the suit is between a citizen of the State where it is brought and a citizen of another State.

"SECOND. Of all suits in equity where the matter in dispute, exclusive of costs, exceeds the sum or value of $500, and the United States are petitioners.

"THIRD. Of all suits at common law where the United States or any officer thereof suing under the authority of any Act of Congress are plaintiffs.

"TWENTIETH. Exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it is, or may be otherwise provided by law, and concurrent jurisdiction with the District Courts of crimes and offenses cognizable therein."

The jurisdictional section of the Constitution (Art. 3, Sect. 2), is as follows:

"The judiciary power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made or which shall be made under their authority; to all cases affecting ambassadors or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof and foreign States, citizens or subjects."

Comparing, now, section 629 of the Revised Statutes and the Act of March 3d, 1875, with the above section of the Constitution, it will be seen that section 629, in its first three paragraphs, confers upon the Circuit Courts only a part of the jurisdiction granted by the Constitution to the Courts of the United States, and that the Act of March 3d, 1875, confers upon the Circuit Courts almost the entire jurisdiction granted by the Constitution.

But comparing the first three paragraphs of section 629 with the

Act of March 3d, 1875, it will be found that under the former the incidents of a suit cognizable in the Circuit Court are :

FIRST. A matter in dispute exceeding $500.
SECOND. The United States as plaintiffs ; or
THIRD. An alien as a party ; or
FOURTH. A suit between a citizen of the State where the suit is brought and a citizen of a different State.

Under the Act of March 3d, 1875, the incidents of a suit cognizable in the Circuit Courts are :

FIRST. A matter in dispute exceeding $500.
SECOND. Arising under the Constitution or laws of the United States ; or
THIRD. In which the United States are plaintiffs ; or
FOURTH. Where there is a controversy between citizens of different States ; or
FIFTH. A controversy between citizens of a State and foreign States.

From this comparison it becomes sufficiently evident that the main object of the Act of March 3d, 1875, so far as the question of the jurisdiction of the Circuit Courts is concerned, was to extend that jurisdiction from its former limit nearly to the full limit of the jurisdiction granted by the Constitution.

The Act of March 3, 1875, contains in its last section the usual repealing clause of "all acts and parts of acts in conflict with the provisions of this act."

Can any part of section 629 of the Revised Statutes be said to be in conflict with the Act of March 3, 1875, except the sections which we have quoted above, and which relate to *the general jurisdiction* of the Circuit Court ?

As has been pointed out, the remaining paragraphs of section 629 are sections of laws enacted at various times between 1789 and 1875, conferring special jurisdiction or jurisdiction in special cases, or for special purposes, upon the Circuit Court.

This will appear upon the slightest examination.

Thus paragraph *fifth*, section 629, confers jurisdiction of suits

and proceedings to enforce penalties for the carriage of passengers in merchant vessels.

Paragraph *sixth* confers jurisdiction of proceedings for the condemnation of property under section 5308; title "Insurrection."

Paragraph *seventh*, of suits relating to the slave trade.

Paragraph *ninth*, of suits under patent and copyright laws.

Paragraph *tenth*, of suits by or against banking associations.

And so it will be found that each of these sections confers jurisdiction in some special case.

It certainly cannot be held or supposed that it was intended by the act of March 3d, 1875, to repeal these paragraphs of Section 629, which confer jurisdiction in special cases.

But this conclusion has already been fully established by authority.

In Third Nat. Bank of St. Louis vs. Harrison, 8th Fed. Rep., 721, an action was brought by the plaintiff, a corporation organized under the National Banking Act, to recover judgment upon a certain promissory note executed by the defendant Harrison. The defendant Harrison moved to dismiss the cause for want of jurisdiction, on the ground that the Act of March 3d, 1875, repealed all prior acts upon the subject of the jurisdiction of the Circuit Court, including the provision authorizing suits by national banks (paragraph 10, section 629, Rev. Stats.) Judge McCRARY, upon this point, says:

"I am of the opinion that the jurisdiction in this case cannot be maintained under the act of March 3, 1875, alone. If the effect of that act is, as contended by counsel, to repeal so much of section 629 of the Revised Statutes as gives the Circuit Courts jurisdiction of all suits by or against any banking association established in the district for which the Court is held, it follows that the present motion must be sustained. But it is very clear that the Act of 1875 has no such sweeping effect as that claimed for it by counsel. It is a general statute on the subject of the jurisdiction of the Circuit Court, and it does not repeal prior statutes conferring jurisdiction upon those Courts in special cases, or over particular controversies unless it is clear from the language employed that such was the intent of Congress. There is no express repeal of section 629 of the Revised Statutes. The law does not favor a repeal by implication, and in order to support such a repeal the repugnance between the latter

and earlier statutes must be quite plain. If the subsequent act can be reconciled with the former it will not be held to repeal it.

"Again, it is a rule long settled that a later statute which is general and affirmative in its provisions, does not abrogate a former which is particular or special. Courts will not allow such an exposition of the statute as will revoke or alter by construction of general words a previous special statute where the words may have their proper operation, without it. These general propositions are so familiar and well settled that it is unnecessary to quote authority to support them. Applying them to the Act of 1875, we are constrained to hold that it does not either expressly or by necessary implication repeal the tenth clause of section 629 of the Revised Statutes, under which the suit is brought. To give to the Act of 1875 the construction contended for and to hold that there is no other statute under which the Circuit Courts of the United States can in any case have jurisdiction, would lead to consequences disastrous in their effects and which Congress could not have had in contemplation. An examination of prior statutes will show numerous provisions under which suits may be brought in particular cases in the Circuit Courts of the United States, and some at least of which could not be maintained under the Act of 1875."

In United States vs. Mooney, 11 Fed. Rep., 416, an action at law was brought by the United States, in the Circuit Court of the District of Massachusetts, to recover penalties alleged to have been incurred by the defendant in an importation of goods from Canada by means of false invoices. The defendant moved to dismiss the suit for want of jurisdiction in the Circuit Court to entertain it. The Government relied on the first section of the Act of March 3d, 1875. And Judge LOWELL says, after quoting section one of the Act of March 3d, 1875:

"This language in its terms includes this case because the suit is of a civil nature at common law and the United States are the plaintiffs; nevertheless, I am of the opinion that the Circuit Court has no jurisdiction of it. Down to 1875, it is admitted that the District Courts had exclusive cognizance of all suits for penalties and forfeitures under the Customs Laws. The Judiciary Act of 1789, section 11, is in language and intent substantially like section 1 of the Act of 1875. The latter enlarges the scope of the former in some particulars but not in its general purport. The Judiciary Act was comprehensive enough to include actions for penalties in which

the United States were plaintiffs, yet it did not include them. That statute in its ninth section gave to the District Courts exclusive cognizance of all suits for penalties and forfeitures incurred under the laws of the United States and this modified the scope of the eleventh section. *The Cassius*, 2 Dall., 365; Evans vs. Bollen, 4 Dall., 342. Since that time the Circuit Courts have received concurrent jurisdiction with the District Courts of many suits of a similar nature under the laws for the collection of internal revenue, to secure civil rights, to prohibit the slave trade and many others, and under the Shipping Act it has exclusive cognizance of some cases which would seem to belong more properly to the District Courts, but it has not, in so many words, been invested with jurisdiction of suits for penalties and forfeitures under the Customs Laws. The question is whether this is intended to be included in the grant of 1875.

"The Revised Statutes of 1874, section 629, has twenty distinct paragraphs re-enacting laws which granted original jurisdiction to the Circuit Courts, of which the first three represent section eleven of the original judiciary act concerning civil suits between citizens of different States, or aliens and citizens, or where the United States are plaintiffs, the amount in dispute being in all cases more than $500. Then follows: (fourth) "all suits in law or in equity arising under any act providing for revenue from imports or tonnage, except civil causes of admiralty jurisdiction, seizures and suits for penalties and forfeitures. This is another mode of saying that the jurisdiction of suits for penalties and forfeitures remains exclusively vested in the District Courts as before. In the succeeding clauses the jurisdiction given by a great variety of statutes is carefully re-stated and re-enacted.

"If the Statute of 1875 was intended to cover the whole ground of jurisdiction and thus to repeal by implication all former laws and blot out these numerous clauses of the Revised Statutes, it would diminish considerably the province of the Circuit Courts, while it would enlarge very much that of the State Courts. It would limit the Circuit Courts by confining them in suits upon patents, copyrights and a great variety of other cases arising under the laws of the United States, to those in which the matter in dispute exceeds $500. Such a construction, says McCrary, C. J., would be disastrous (*Third National Bank of St. Louis vs. Harrison*, 8 Fed. Rep., 721–2).

"It would enlarge the powers of the State Courts by giving them concurrent cognizance of all suits where the amount exceeds $500,

for a recognition of concurrent jurisdiction is a grant of it, though it may not have existed before (*Postmaster-General vs. Early, 12 Wheat., 136*).

"I do not mean that Congress can confer jurisdiction directly upon the State Courts, but if Congress creates rights between party and party the State Courts, by the necessity of their organization, are bound to enforce them unless prohibited.

"From these considerations I infer that the broad language of the first section of the Act of 1875 was intended to apply to those ordinary suits to which similar words in section eleven of the Act of 1789 and in clauses one, two and three of section 629, Revised Statutes, by their connection and context, were necessarily confined, and was not designed to affect either affirmatively or negatively the exclusive jurisdiction of the Circuit Courts under the various Statutes to which I have alluded nor their concurrent jurisdiction, with the District Courts, under other statutes nor the exclusive jurisdiction of the District Courts of suits for penalties and forfeitures under Customs Laws.

"In short, the argument is that section eleven of the Act of 1789, and its reproduction in the Revised Statutes, included within itself the exception of cases not otherwise provided for by more special and definite provisions, and that the Act of 1875 carries a similar limitation, being intended simply to enlarge that part of the jurisdiction conferred by section eleven, applying it to more cases but to cases of a similar character. The restricted meaning attached to the general words by the usage of eighty-six years is presumed to continue."

In *Price vs. Abbott, 17 Fed. Rep., 506*, actions were brought, by direction of the Comptroller of the Currency, by the plaintiff, a citizen of New Jersey, as Receiver of the Pacific National Bank of Boston (a corporation organized under the national banking laws of Congress), appointed under the Act of Congress of June 30, 1876, by the Comptroller of the Currency, against sundry citizens of Massachusetts, stockholders in the bank, to recover their shares of an assessment made by the Comptroller of the Currency to provide money necessary to pay the debts and liabilities of the bank.

The defendants moved to dismiss for want of jurisdiction.

Upon this motion, Judge GRAY says: "The defendants contend that the jurisdiction of this Court, at least over the second action, in which less than $500 is sued for, has been taken away by the Act of March 3d, 1875, section 1, by which it is enacted "that the Cir-

cuit Courts of the United States shall have original cognizance, concurrent with the Courts of the several States, of all suits of a civil nature at common law or in equity where the matter in dispute exceeds, exclusive of costs, the sum or value of $500, and arising under the Constitution or laws of the United States or treaties made, or which shall be made under their authority, or in which the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States."

"But the purpose of the Act of 1875 is to define the jurisdiction of the Circuit Courts as between them and the Courts of the States; not to alter the distribution of jurisdiction as between the Circuit Court and the District Court, of cases which, by reason of their subject matter, have been committed by Congress to the determination of the Federal Courts, nor to repeal the special provisions of former laws conferring on the Circuit and District Courts jurisdiction of such cases *without regard to the amount in dispute.* The construction contended for would, as has been observed by Judge LOWELL, deprive the Federal Courts of jurisdiction of suits upon patents, and copyrights and of a great variety of other cases arising under the laws of the United States *whenever the matter in dispute does not exceed $500*" (*U. S. vs. Mooney, 11 Fed. Rep., 476*).

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The Court below in its opinion says: "We think that Congress, by the Act of March 3, 1875, in cases arising under the Constitution, as well as in other cases mentioned in said act arising between citizens of different States, requires the amount involved to be a sum exceeding $500, exclusive of costs, before the jurisdiction of the United States Circuit Courts extends over it."

There is nothing in this proposition which conflicts with the position taken in this argument.

The Act of March 3, 1875, is not the only source of jurisdiction of the Circuit Courts.

Jurisdiction has been conferred on these Courts by several other acts, in special cases, and unless these acts conferring jurisdiction in special cases and over special matters, have been repealed by the Act of March 3, 1875, they are still in force. Our claim is that jurisdiction is conferred over this special matter—deprivation of a right secured by the Constitution—by the 16th paragraph of section 629

U. S. Rev. Stat., and that the Act of March 3, 1875, has in no manner affected such jurisdiction.

The foregoing argument may be summarized as follows:

I.

The Court below erred in dismissing the bill for want of jurisdiction, because,

A. The cause of action set forth in the bill is the deprivation by the defendant, under color of a State statute, of the plaintiff's right to pay his taxes in coupons of Virginia bonds of 1871.

B. The right here asserted by the complainant is a right "*secured to him by the Constitution of the United States.*"

C. The deprivation or attempted deprivation of this right is expressly made the foundation of a suit in equity by section 1979 of the U. S. Rev. Stat.

D. Jurisdiction over such a suit is expressly granted to the

Section 699 of U. S. Revised Statutes provides as follows:

"SEC. 699. A writ of error may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity, hereinafter mentioned, WITHOUT REGARD TO THE SUM OR VALUE IN DISPUTE.

"* * * * * * * * *

FOURTH. Any final judgment at law or final decree in equity of any Circuit Court, or of any District Court in ANY CASE BROUGHT ON ACCOUNT OF THE DEPRIVATION OF ANY RIGHT, PRIVILEGE OR IMMUNITY SECURED BY THE CONSTITUTION OF THE UNITED STATES, or of any right or privilege of a citizen of the United States."

The Court below held that in all suits cognizable in that Court the pecuniary amount must be $500, exclusive of costs, and yet *here is jurisdiction conferred on this Court*, EXPRESSLY WITHOUT REGARD TO THE AMOUNT OR VALUE IN DISPUTE, in such suits as the present one.

If the Court below is right, we have this absurdity in legislation, namely—jurisdiction conferred in this Court *without regard to the amount involved*, in a case which cannot be brought in this Court below *unless the sum of $500 is involved.*

In other words, *this Court has express jurisdiction, on appeal, of a case which cannot be brought in the Circuit Court!*—a veritable *reductio ad absurdum!*

cuit Courts of the United States shall have original cognizance, concurrent with the Courts of the several States, of all suits of a civil nature at common law or in equity where the matter in dispute exceeds, exclusive of costs, the sum or value of $500, and arising under the Constitution or laws of the United States or treaties made, or which shall be made under their authority, or in which the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States."

"But the purpose of the Act of 1875 is to define the jurisdiction of the Circuit Courts as between them and the Courts of the States; not to alter the distribution of jurisdiction as between the Circuit Court and the District Court, of cases which, by reason of their subject matter, have been committed by Congress to the determination of the Federal Courts, nor to repeal the special provisions of former laws conferring on the Circuit and District Courts jurisdiction of such cases *without regard to the amount in dispute*. The construction contended for would, as has been observed by Judge LOWELL, deprive the Federal Courts of jurisdiction of suits upon patents, and copyrights and of a great variety of other cases arising under the laws of the United States *whenever the* [illegible]
exceed $500" [illegible]

U. S. Rev. Stat., and that the Act of March 3, 1875, has in no manner affected such jurisdiction.

The foregoing argument may be summarized as follows:

I.

The Court below erred in dismissing the bill for want of jurisdiction, because,

A. The cause of action set forth in the bill is the deprivation by the defendant, under color of a State statute, of the plaintiff's right to pay his taxes in coupons of Virginia bonds of 1871.

B. The right here asserted by the complainant is a right "*secured to him by the Constitution of the United States.*"

C. The deprivation or attempted deprivation of this right is expressly made the foundation of a suit in equity by section 1979 of the U. S. Rev. Stat.

D. Jurisdiction over such a suit is expressly granted to the United States Circuit Courts by *paragraph 16 of Section 629 of the U. S. Rev. Stat.*

II.

The right asserted in his bill by the complainant is a right secured to him by Section 10, Article I. of the original Constitution, as well as by the Fourteenth Amendment.

A. This is specially established by the Slaughter House cases and the Civil Rights cases.

III.

The pecuniary limit of $500 does not apply to this case, because—

A. No such limit was fixed by the 16th paragraph of Section 629 of the Revised Statutes.

B. The Act of March 3, 1875, affects only the general jurisdiction of the Circuit Courts, and does not take away expressly or by implication the jurisdiction conferred by special statutes.

Addendum.

(*a*) The opinion of the Circuit Judge seems to proceed on the theory that the general phrase in the Act of March 3d, 1875,—"suits * * * arising under the Constitution or Laws of the United States," covers and supersedes the special jurisdiction conferred by the 16th paragraph of § 629 of the U. S. Rev. St., which refers to particular cases arising under the Constitution and certain of the laws of the United States. But the learned Judge proceeds to say that by § 1979 "there may be cases arising under the Constitution of the United States, or the laws thereof, not for the recovery of money or sounding in damages, but to maintain or recover the rights, privileges and immunities of a citizen of the United States as such. In a case of this kind the United States Courts have abundant jurisdiction and power to maintain the rights of the citizen. But it is so ordered by Congress that *if the right to be maintained involves a money consideration*, before the Courts of the United States can entertain it, that consideration must exceed in amount $500 exclusive of costs."

It is not a little difficult to see how the learned Judge reasons out such a distinction. If the general language as to suits "arising under the Constitution and laws," covers all cases arising under the Constitution and laws and repeals all prior legislation on the subject, then this result must follow inexorably and equally whether the controversy "involves a money consideration" or not. There is no exception incorporated in the Act of 1875, preserving former remedies in cases not involving a "money consideration," any more than there is such an exception incorporated in the act preserving former remedies in cases where there is a "money consideration," but where the matter in dispute is less than $500. And if we can engraft such an exception upon the statute as to cases not involving a "money consideration," why can we not likewise engraft such an exception as to cases where there is a "money consideration," but less than $500?

The truth is, there is *no middle ground*. Either the clause in in question in the Act of 1875 is exclusive of and supersedes *all* prior statutes giving jurisdiction of suits arising under the Constitution or laws of the United States, and requires that in *all* such cases the Circuit Court has no jurisdiction unless the amount in